

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3384 of 1994
With
SPECIAL CIVIL APPLICATION No. 8450 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SIDDHARDH S PATEL & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR TS NANAVATI for Petitioner(s) : 1 - 2.MR BHARAT R PANDYA for
Petitioner(s) : 1,

MR LR PUJARI, AGP for Respondent(s) : 1 - 2.

RULE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/03/2007

COMMON ORAL JUDGMENT

1. Petitioner Siddharth, son of Shirishchandra

Patel has filed these writ applications being aggrieved by the orders passed by the Mamlatdar cum District Supply Officer, confirmed in appeal by the Collector and approved by the Secretary on 2.3.94.

2. The short facts necessary for disposal of these petitions are that a license was granted by City Mamlatdar, Ahmedabad to one Shirishchandra Patel as proprietor to carry on business of a Gas Agency for and on behalf of the Indian Oil Corporation. The said Shri Shirishchandra expired on 19.4.90, therefore, an application was made by the present petitioner for substitution of his name in the license and renewal of the same in his name. During pendency of the said application, the petitioner carried on the business. On 16.7.92, Supply Inspector made an inspection and found illegalities as are detailed in Annexure:F. The illegalities showed that the petitioner had not made an application for changing the name, instead of charging Rs. 78/-, the petitioner was charging Rs. 80/- from the consumer, refills

were not supplied in time and refills were supplied in haphazard manner, supply register was not maintained in accordance with the rules and the stock position was not shown on the board which was required to be exhibited on the main gate of the Agency. It was also informed that at the time of the inspection, statement of the Manager namely Shri Vijaybhai Rammanohar Patel was recorded and he had made certain admissions. The petitioner, through the said Vijaybhai Patel filed replies but did not make any application for supply of documents on which the respondent authorities were placing their reliance nor he required them that copy of the statement of the said Manager be supplied to him in view of the fact that the Manager had filed an affidavit before the Mamlatdar cum District Supply Officer stating therein that his statements were not recorded. He also did not make any application to the Mamlatdar cum District Supply Officer that in view of the disputed questions of facts, he be allowed to lead evidence. He felt content with the

allegations made in the show cause notice, his reply and alleged affidavit of the Manager. After hearing the parties, the Mamlatdar cum District Supply Officer found that in view of the irregularities, license could not be transferred in favour of the present petitioner, he accordingly cancelled the license.

3. Being aggrieved by the same, the petitioner through his Manager, took up the matter before the Collector in appeal, but as the appeal was dismissed, he filed revision application before the Deputy Secretary, who dismissed the same on 2.3.94. The petitioner is now before this Court.

4. It appears that before coming to this Court, the petitioner had filed an application before the authority for grant of license under the provisions of Essential Commodities Act in his name, but the said application came to be rejected on the ground that as the license has not been renewed or transferred because of the lapses committed by the petitioner, and as the address of the Agency and the godown are same, new license could not be granted. Being

aggrieved by the said order, the petitioner has filed Special Civil Application No. 8450 of 1994.

5. It is to be noted that along with Special Civil Application No. 3384 of 1994, the petitioner made an application for grant of ad-interim order, but the same was rejected. Thereafter, Hon'ble Judge of this Court decided the matter in absence of the petitioner's counsel, being aggrieved by the same, the petitioner took up the matter in Letters Patent Appeal, the Letters Patent Appeal was allowed and the matter was restored to its original number.

6. Shri Nanavati, learned counsel for the petitioner, after taking me through the records, submits that the orders passed by the authorities are patently illegal, because orders violate principles of natural justice. In his submission, notice to show cause was not accompanied with the documents and as the petitioner was not supplied foundation of the allegations, order is bad. On being asked that whether at any point of time during pendency of

the matter before the Mamlatdar cum District Supply Officer, any application for supply of documents was ever made, Shri Nanavati fairly conceded that such application was not made before the said authority. He, however, submitted that an application for supply of the document was made after the Mamlatdar cum District Supply Officer had finally disposed of the matter. If during pendency of the matter, the petitioner did not feel that his defence is prejudiced because of non-supply of the documents and he was able to file a detailed reply even without supply of the documents, or without leading any evidence, then at the appellate stage or in the proceedings before the High Court, he cannot be allowed to say that the petitioner suffered prejudice to his defence. Principles of natural justice though are of universal application, but they do not apply to every and odd situation. In a given case, if the party does not find any prejudice because of non-supply of the documents and proceeds with the matter and fails in the chance

which it had taken, then the said party cannot be allowed to say at the appellate or High Court stage that prejudice was suffered by them. In the reply to the notice to show cause, the petitioner did not make any demand nor at any point of time ever made any application that the documents on which the authorities were placing reliance were not supplied to him, therefore, he was unable to defend his case and cause.

7. When a party does not act prudent and vigilant and feels happy and content with its conduct, then, such party would not be allowed to say that the basic duty was cast upon the authorities to supply the documents and any lapse on the part of the noticee would not make any difference.

8. It was next contended that the Manager of the agency had filed an affidavit before the Mamlatdar cum District Supply Officer that his statements were never recorded. The said affidavit is not before me and even if such affidavit was filed, then the Mamlatdar cum

District Supply Officer and the authority could accept or reject the affidavit in view of the earlier statements recorded by the Supply Inspector. The petitioner never made an application to the Mamlatdar cum District Supply Officer that he wanted to lead evidence nor he requested the Mamlatdar to summon the witnesses along with the records so that correct version of the dispute is brought on the records. If such conduct was exhibited by the petitioner before the Mamlatdar, then, he cannot be allowed to say that there was breach of the principles of natural justice.

9. After taking me through the order passed by the Deputy Secretary, it was contended that in relation to most of the irregularities, the Deputy Secretary has found in favour of the petitioner and under the circumstances, it was not necessary to reject the revision application. His further submission is that unless a line of distinction is drawn between immaterial irregularities and material irregularities amounting to illegality, revision

could not be dismissed.

10. I have gone through the said order. In the said order, certain irregularities like non-supply of refills on demand, non-supply of refills on the basis of priority have been taken to be immaterial irregularities. It has also been observed that in case additional Rs.2/- are charged, because, the petitioner was to supply the refills at the door-step of the consumer, there was no illegality or irregularity. If some benefit is given to the petitioner on account of small irregularities, irregularities which amount to illegality would not be shrouded by such exemptions. The authorities have concurrently found that the supply register which was required to be maintained by the petitioner was not maintained in accordance with law. They have also found that no explanation was coming forth from the side of the petitioner in relation to non-maintenance of the supply register. The authorities have also concurrently found that sum of Rs.2/- was charged extra from the persons who were receiving cylinders not at

their door-steps but were collecting at the office of the agency or godown. It is not the question of Rs.2/- but it is the question of irregularity. The petitioner could not show as to why he was charging extra amount over and above the amount he was entitled to recover. If charge of Rs.2/- and true circumstances are decided on basis of different yardstick, then no illegality can be found in the order and appreciation of the evidence. In case, the petitioner was required to provide extra services, he would certainly be entitled to some extra benefit, but in case, he was not providing any extra services, then, he was obliged to serve the consumer without charging anything else.

11. In the opinion of this Court, the authorities were not wrong in canceling the license.

12. So far as Special Civil Application No. 8450 of 1994 is concerned, I must immediately hold that if at the request of the petitioner, license was not renewed or transferred in his name because of the illegalities committed by him, even after

the death of his father on 19.4.90 up to 16.7.92, such person would not be entitled to apply for a fresh license. If for the lapses committed by the petitioner, no relief could be granted to him in case of renewal of license, then, such lapses would certainly persuade the authorities in not granting fresh license. Grant of a fresh license in view of the facts of this case would amount to adding a premium to the lapses and illegalities committed by the petitioner.

13. I find no reason to interfere in the matter. Both the petitions are dismissed. Rule is discharged in each of the petition. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-